



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,178	11/13/2003	Gordon R. Huber	MORN-0034 (108347.83)	7893
25555	7590	01/06/2006	EXAMINER	
JACKSON WALKER LLP 2435 NORTH CENTRAL EXPRESSWAY SUITE 600 RICHARDSON, TX 75080			MADSEN, ROBERT A	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/712,178

Applicant(s)

HUBER ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-71 is/are pending in the application.
- 4a) Of the above claim(s) 25-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 and 48-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Applicant's election without traverse of claims 1-24,48-71 in the reply filed on November 28,2005 is acknowledged.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,4-6,8-13,15-17,20,24,48,51-53,55-60,62-64,71 are rejected under 35 U.S.C. 102(b) as being anticipated by Oh (US 5695801).
4. Regarding claims 1,4-6,8-13,15-17,20,24, 48,51-53,55-60,62-64,71, Oh teaches a non-aseptically packaged partially cooked extruded pasta made from up to 75% wheat flour ,a preservative, and coated by an acid, at for example 60 grams acid per 200 grams pasta, that the pasta has a pH of 3.9-4.2 and Aw of 0.82-0.84 and is shelf stable at ambient temperature for six months (Column 1, lines 20-51, Column 4, lines 13-66, Example 1).
5. Claims 1,4-6,8-11,13,14,17,20,22-24,51-53,55-58,60,61,64,67,69-71 are rejected under 35 U.S.C. 102(b) as being anticipated by Debbouz et al. (US 6428835 B1).
6. Regarding claims 1,4-6,8-11,13,14,17,20,22-24,51-53,55-58,60,61,64,67,69-71, Debbouz et al. teach a non-aseptically packaged partially cooked extruded pasta, that

Art Unit: 1761

may be made from rice flour ,a preservative, and lactic acid whereby the extrusion encapsulates the acid, that the pasta has a pH of 3.8-4.6 and Aw of 0.5-0.85 and is shelf stable at ambient temperature for 9 months (See Column 2, line15-65, Column 3, lines 4-Column 4, line 35).

7. Claims 1,4,6-8,10,11,17,20,22-24,48,51,53-55,57,58,64,67,69-71 are rejected under 35 U.S.C. 102(b) as being anticipated by West et al. (US 6444244 B1).

8. Regarding claims 1,4,6-8,10,11,17,20,22-24,48,51,53-55,57,58,64,67,69-71, West et al. teach an extruded fully cooked soft pretzel, which includes greater than 35% of a grain flour, that has a pH below 5.5, with an Aw of 0.85, and is packaged in a nonaspeptic package for a shelf life at ambient for twelve weeks, wherein the extruded matrix includes a preservative, sorbic acid and an acid, such as lactic acid. See Column 3, line 35 to column 5, line 15.

9. Claims 1,4-8,10,15-18,20,21,23,48,51-55,57,62-65,67,68,70 are rejected under 35 U.S.C. 102(b) as being anticipated by Poulos et al. (US 6132786).

10. Regarding claims 1,4-8,10,15-18,20,21,23,48,51-55,57,62-68,70, Poulos et al. teach a non-aseptically packaged cooked cookie, made from flour and including alkali metal sorbates and lactic acid with a pH of 3.5-6.5 and Aw of 0.6-0.8 and is shelf stable at ambient temperature for 6 months (See Column 4, lines 10-45, Column 5, lines 4-24, Column 6, line 55 to Column 7, line 14, Column 9, line 20 to column 10, line 12, Column 11, lines 17-35).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2,3,19, 49,50,66 are rejected under 35 U.S.C. 103(a) as being unpatentable over West et al. (US 6444244 B1) as applied to claims 1,4,6-8,10,11,17,20,22-24,48,51,53-55,57,58,64,67,69-71, further in view of Kemp et al. (US 6436891 B1).

13. Regarding claims 2,3,19, 49,50,66, WEST et al. teach it is preferred to provide various combinations of acids, including sorbic acid and lactic acid for preservation in the extruded pretzel. However, WEST et al. are silent in teaching Group IIA acid complexes or highly acidic metalated organic (HAMO) or with inorganic acids, with an additive such as an organic acid, alcohol, periodic acid or surfactant, and acidified calcium sulfate as recited in claims 2,3,19, 49,50,66,

14. Kemp et al. et al. teaches conventional chemical preservatives used to extend the shelf-life of foods introduce flavors and residues to the foods. Kemp et al. teach Group IIA acid complexes with acidified calcium sulfate as an alternative preservative composition to conventional chemical preservative compositions used with food products, along with an additive such as an organic acid, alcohol, periodic acid or surfactant that has a synergistic effect in improving the preservative properties of the Group IIA complexes. Kemp et al. teaches conventional preservatives change the

flavor of the food and introduce residues, but the Group II A acid complex composition produces a safer and more desirable food product because it does not affect the flavor of food and does not produce any chemical residues( Column 11, line 55 to Column 12, line 12, Column 10, lines 1-22, Column 5, line5 to Column 6, line 10). Therefore, it would have been obvious to modify WEST et al. and include Group IIA acid complexes with an additive such as an organic acid, alcohol, periodic acid or surfactant, and acidified calcium sulfate in the pretzel of WEST et al. since this composition offers a safer, non-flavor affecting, and more desirable means to provide a shelf-stable food product than conventional preservatives.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Forneck et al. (US 2002/0136814), Cornwell et al. (US 6663904 B2),Bajracharya et al. (US 6001405), Bajracharya et al. (US 5922381) and Lengerich et al. (US 4999208) also teach low acid, intermediate to high water activity shelf stable products.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 8:00AM-4:30PM M-F.

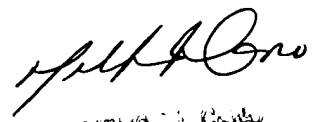
17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen  
Examiner  
Art Unit 1761

RAM

  
SECTION 1.00  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700